

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

WUD 125547

WUI 620976

CABLE ADDRESSES

CRAVATH, N. Y.

CRAVATH, PARIS

CRAVATH, LONDON E. C. 2

FILE 1425

RECORDATION NO.

12698-A

DEC 31 1980-11 25 AM

INTERSTATE COMMERCE COMMISSION

COUNSEL
MAURICE T. MOORE
CARLYLE E. MAW

ROSWELL L. GILPATRIC
ALBERT R. CONNELLY
L. R. BRESLIN, JR.
GEORGE S. TURNER
FRANK H. DETWEILER
GEORGE G. TYLER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON
WILLIAM B. MARSHALL
ROYALL VICTOR
ALLEN H. MERRILL

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-61-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 1-606-1421
TELEX: 6614901

RALPH L. McAFEE
HENRY W. DEKOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL

FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID SOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN
WILLIAM P. DICKEY
STUART W. GOLD
JOHN W. WHITE
JOHN E. BEERBOWER

DEC 31 1980-11 25 AM

INTERSTATE COMMERCE COMMISSION

December 29, 1980

The Dow Chemical Company

Lease Financing Dated as of December 15, 1980

12.02% Conditional Sale Indebtedness Due January 1, 1999

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Dow Chemical Company for filing and recordation counterparts of the following agreements:

(1) Conditional Sale Agreement dated as of December 15, 1980, between First Security State Bank, as Vendee, and North American Car Corporation, as Builder; and

(2) Agreement and Assignment dated as of December 15, 1980, between Mercantile-Safe Deposit and Trust Company, as Agent, and North American Car Corporation, as Builder.

The names and addresses of the parties to the aforementioned agreements are as follows:

(1) Agent-Assignee:

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza,
Baltimore, Maryland 21203.

(2) Trustee-Vendee:

First Security State Bank,
79 South Main Street,
Salt Lake City, Utah 84111.

0-366A0

No.

Date

DEC 31 1980

Fee \$

50.00

ICC Washington, D. C.

DOCUMENTS
BRANCH

DEC 31 11 21 AM '80

Handwritten signature: Robert W. Mergenovich

(3) Builder-Vendor:

North American Car Corporation,
222 South Riverside Plaza,
Chicago, Illinois 60606.

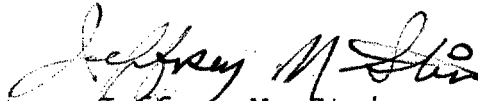
Please file and record the documents referred to in this letter and index them under the names of the Agent-Assignee, the Trustee-Vendee and the Builder-Vendor.

The equipment covered by the aforementioned documents consists of 28 3,000 cu. ft. pressure differential cement cars bearing the Lessee's identification numbers DOWX 5569-5596, both inclusive, and also bears the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Jeffrey M. Stein
as Agent for The Dow
Chemical Company

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

10A

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Jeffrey M. Stein
Cravath, Swaine, & Moore
One Chase Manhattan Plaza
New York, N. Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/31/80 at 11:25AM , and assigned re-recording number(s). 12698, & 12698-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

[CS&M Ref: 3626-011A]

12698-A

REGISTRATION NO. _____ Filed 1980

DEC 31 1980-11 25 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of December 15, 1980

Between

NORTH AMERICAN CAR CORPORATION,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1980, between NORTH AMERICAN CAR CORPORATION (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Supplemental Participation Agreement dated as of the date hereof (the "Assignee").

The Builder and FIRST SECURITY STATE BANK, as Trustee (the "Vendee") under the Trust Agreement dated as of June 15, 1980, as amended as of the date hereof with First Security Bank of Utah, N.A. ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA other than equipment excluded pursuant to Article 3 thereof (the "Category B Equipment").

The Vendee and THE DOW CHEMICAL COMPANY (the "Lessee") have entered into a Lease of Railroad Equipment dated as of June 15, 1980, as amended as of the date hereof (the "Lease") providing for the lease to the Lessee of the Category B Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of the Category B Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to con-

construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Category B Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Category B Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to each Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of the Builder to the Vendee with respect to the Category B Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the New CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Category B Equipment in full accordance with the

CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the CSA until the CSA and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or

action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by such Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on the Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the Purchase Price thereof which, under the terms of said Article 4, is payable in installments provided that there shall have been delivered to the Assignee on or prior to the Closing Date, the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested

by said special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Category B Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and, assuming that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, are valid and effective to vest in the Assignee the security interest of such Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4)

required to be made on the Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee by such Builder or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the

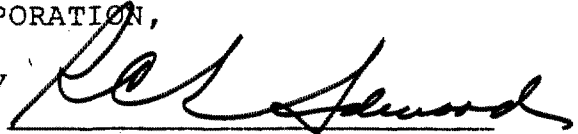
parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Category B Equipment shall be located, and any rights arising out of the marking on the units of Category B Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NORTH AMERICAN CAR
CORPORATION,

by



[Corporate Seal]

Attest:


Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 30th day of December 1980, before me personally appeared R. C. Underwood, to me personally known, who being by me duly sworn, says that he is a Vice President of North American Car Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission expires Feb. 27, 1963

STATE OF MARYLAND,)
) ss:
CITY OF BALTIMORE,)

On this day of December 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission expires

STATE OF ILLINOIS,)

) SS.:

COUNTY OF COOK,

On this day of December 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of North American Car Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission expires

STATE OF MARYLAND,)

) SS:

CITY OF BALTIMORE,)

On this 26th day of December 1980, before me personally appeared R. E. Schreiber, to me personally known, who being by me duly sworn, says that he is a ASSISTANT VICE PRESIDENT of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission expires 7/1/84.

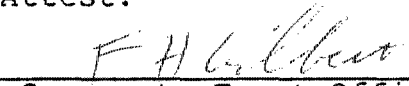
MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,

by


Assistant Vice President

[Corporate Seal]

Attest:


Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the
assignment made by, the foregoing Agreement and Assignment
is hereby acknowledged as of December 15, 1980.

FIRST SECURITY STATE BANK,
as Trustee,

by

Authorized Officer

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,

by

Assistant Vice President

[Corporate Seal]

Attest:

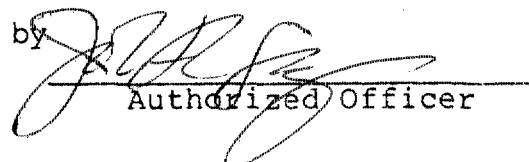
Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the
assignment made by, the foregoing Agreement and Assignment
is hereby acknowledged as of December 15, 1980.

FIRST SECURITY STATE BANK,
as Trustee,

by


Authorized Officer